

EXHIBIT B
AMENDED AND RESTATED
LOCAL PARTICIPATION AGREEMENT

This **AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT** (the “Amended Agreement”) effective as of the ___ day of _____, 20___, by and between (i) **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government (“Louisville”) and (ii) the **METRO DEVELOPMENT AUTHORITY, INC.**, a Kentucky non-profit, non-stock corporation (“Authority”).

RECITALS:

WHEREAS, the General Electric Company (“GE”) In May of 2009 proposed to develop a project at its Appliance Park Facility in accordance with the Development Plan attached thereto (“Project”); and

WHEREAS, Louisville and the Authority, to induce GE to undertake the Project, plan to provide certain incentives to GE including tax increment financing proceeds pursuant to KRS 65.7041-65.7083 (the “Act”); and

WHEREAS, pursuant to the Act, the Metro Council of Louisville, by Ordinance No. 68, Series 2009, enacted on May 28, 2009, designated the Project site as a development area, as more particularly described in Exhibit B (“Development Area”); and

WHEREAS, the Project shall represent new economic development in Louisville; and

WHEREAS, Louisville finds that the Project to be undertaken in the Development Area will result in the increase in the value of property located in the Development Area and result in increased employment within the Development Area; and

WHEREAS, the use of tax increment financing to assist the development of the Project, within the meaning of the Act is a worthy public purpose; and

WHEREAS, Louisville is authorized under the Act to execute a local participation agreement with an agency in acknowledgement of benefits to be derived by Louisville within a development area in order to promote the public purpose of Louisville; and

WHEREAS, the Authority is organized and incorporated as a non-profit corporation pursuant to KRS Chapter 58 and qualifies to be an “Agency” pursuant to the Act; and

WHEREAS, pursuant to the Ordinance, the Authority has been designated as the “agency,” within the meaning of the Act for the purposes of receiving a portion of the Tax Increments generated by the Project in the Development Area; and

WHEREAS, Louisville desires to assist Developer with the costs of the Project and agrees to enter into this Local Participation Agreement in order to release to the Authority a portion of the Increment (as hereinafter defined) for use solely for purposes of the Project.

WHEREAS, GE has announced an additional project to be undertaken within the Development Area (“Additional Project”) and the Metro Council has amended the Ordinance by enacting Ordinance No. __, Series 20__, to amend the Development Plan as provided in the Amended Development Plan attached as Exhibit A to the Ordinance to include the Additional Project and further authorized the execution of this Amended Agreement to include the Additional Project and increase the Released Amount, as defined herein.

NOW THEREFORE, Louisville and the Authority agree that in consideration of the premises and the additional consideration provided herein, the parties agree as follows:

Section 1. Definitions

In addition to the terms defined in the above recitals, the following additional terms used in this Amended Agreement shall have the meanings assigned in this Section 1 unless the context clearly indicates that a contrary meaning is intended.

(a) **“Activation Date”** means the date established by notice from GE to the Authority which date shall be no earlier than the Commencement Date and no later than two years from the Commencement Date, unless an extension is granted by the Authority.

(b) **“Base Year”** means January 1, ____ through December 31, ____, the last full year prior to the Commencement Date.

(c) **“Calendar Year”** means January 1 through and including December 31.

(d) **“Commencement Date”** shall mean the date of this Amended Agreement.

(e) **“Increment”** shall mean the amount calculated pursuant to Section 5.3 of this Amended Agreement.

(f) **“Project”** means the projects described in the Amended Development Plan attached hereto as Exhibit A.

(g) **“Project Employees”** shall mean the persons employed by GE specifically for the Project.

(h) **“Project Incentive”** means the payment of the amount not to exceed \$5,000,000 pursuant to this Amended Agreement to induce GE to undertake the Project within the Development Area.

(i) “Louisville Department of Finance” means the department of Louisville so named.

(j) “New Occupational Tax Revenue” means the amount of Occupational License Fees received by Louisville from, or attributable to, the Project within the Development Area in each year after the Activation Date through the term of this Amended Agreement.

(k) “Occupational License Fees” mean the taxes levied upon employees by Louisville pursuant to Louisville Metro Codified Ordinances Chapter 110.

(l) “Old Occupational Tax Revenue” means the amount of Occupational License Fees received by Louisville from, or attributable to, the Project within the Development Area in the Base Year.

(m) “Released Amount” means the amount payable in each Calendar Year from Louisville to the Authority as calculated pursuant to Section 5.4 of this Amended Agreement.

(n) “Termination Date” means the date upon which this Amended Agreement expires pursuant to Section 4.1 of this Amended Agreement.

Section 2. Representations and Warranties

2.1 Representations and Warranties of The Authority. The Authority, represents and warrants to Louisville as follows:

(a) Existence. The Authority is a duly organized and validly existing non-profit corporation created under the laws of the Commonwealth of Kentucky.

(b) Authority to Amended Act. The Authority has the requisite power, capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to observe and to perform this Amended Agreement, in accordance with its terms and conditions. The officers and officials executing and delivering this Amended Agreement on behalf of the Authority have been or are otherwise duly authorized to enter into this Amended Agreement on behalf of the Authority.

(c) Validity of Amended Agreement; Compliance with Law. This Amended Agreement is the legal, valid and binding obligation of the Authority enforceable in accordance with its terms and conditions. The execution and delivery of this Amended Agreement, and the performance or observance by the Authority of the terms and conditions thereof, do not and will not materially violate any provisions of the Authority’s Articles of Incorporation or any laws applicable to the Authority.

(d) Litigation. No litigation or proceeding involving the Authority is pending or, to the best of the knowledge of the Authority, is threatened in any court or administrative agency which, if determined adversely to the Authority, could have a materially

adverse impact on the ability of the Authority to perform any of its obligations under this Amended Agreement.

(e) Conflicting Transactions. The consummation of the transactions contemplated hereby and the performance of the obligations of the Authority under and by virtue of this Amended Agreement shall not result in any material breach of, or constitute a default under, any contract, agreement, lease, indenture, bond, note, loan or credit agreement to which it is a party or by which it is bound.

2.2 Representations and Warranties of the Louisville. Louisville represents and warrants to the Authority and as follows:

(a) Authority to Act. Louisville has the requisite power, capacity and authority to execute and deliver this Amended Agreement, to consummate the transactions contemplated hereby, and to observe and to perform this Amended Agreement in accordance with its terms and conditions. Each of the officials executing and delivering this Amended Agreement on behalf of Louisville has been and is duly authorized to enter into this Amended Agreement on behalf of Louisville.

(b) Validity of Amended Agreement; Compliance with Law. This Amended Agreement is the legal, valid and binding obligation of Louisville enforceable in accordance with its terms and conditions. The execution and delivery of this Amended Agreement, and the performance or observance by Louisville of the terms and conditions thereof, do not and will not violate any provisions of any laws applicable to Louisville.

Section 3. Tax Withholding Numbers

3.1 Requirement. Louisville shall use reasonable efforts to require GE to separately identify the Project Employees and to separately report the wages and salaries of the Project Employees and the Occupational License Fees withheld from the wages and salaries of the Project Employees for each business situs in the Development Area.

Section 4. Released Amount

4.1 Term. Louisville agrees to pay to the Authority, and the Authority does accept from Louisville, the Released Amount for each Calendar Year beginning in the year including the Activation Date, with payment to be made beginning in the Calendar Year following the Activation Date, and for successive Calendar Years continuing automatically thereafter until the earliest of: (i) that date ten (10) years following the initial payment to the Authority; or (ii) that date the aggregate Released Amount paid to the Authority by Louisville during the term of the Amended Agreement equals the amount of \$5,000,000.00.

4.2 Louisville Monitoring, Tracking and Reporting. The Department of Finance shall annually submit to the Metro Council a report concerning the Project and the Development Area including but not limited to:

(a) An accounting of all payments made to the Authority and by the Authority pursuant to this Agreement in the prior fiscal year;

(b) An analysis and review of development activity resulting from the Project within the Development Area as reported to Louisville by GE;

(c) The compliance by GE with the terms of the Amended Development Plan as reported to Louisville by GE; and

4.3 Time of Payment. By the earlier of (i) _____ 1 of each Calendar Year beginning in the year after the year of the Activation Date or (ii) thirty (30) days after the submission by the Authority of a request for the Released Amount under this Amended Agreement, Louisville agrees to pay to the Authority the Released Amount. Prior to payment of the Released Amount to the Authority such funds shall be maintained in a “Special Fund” pursuant to Section 12 of the Act.

4.4 Use of Released Amount. Consistent with the Act, the Authority covenants and agrees that it will use the Released Amount solely for the purposes of paying the Project Incentive. The Authority shall provide to the Department of Finance, no later than ninety (90) days after the end of each Calendar Year during the term of this Amended Agreement, a certification as to the use of the Released Amount during the preceding year.

Section 5. Determination of the Released Amount.

5.1 Old Occupational Tax Revenue. The Department of Finance shall determine the amount of “Old Occupational Tax Revenue” with reasonable accuracy, but may make such assumptions as may be required. Upon the determination of Old Occupational Tax Revenue, Louisville and the Authority shall stipulate the amount of Old Occupational Tax Revenue by written addendum to this Amended Agreement. The amount of Old Occupational Tax Revenue so stipulated shall be valid throughout the term of this Amended Agreement.

5.2 New Occupational Tax Revenue. The Department of Finance shall calculate the amount of “New Occupational Tax Revenue” each year after the Activation Date prior to the Time of Payment pursuant to Section 4.3 of this Amended Agreement by calculating the total amount of Occupational License Fees received by Louisville attributable to the wages and salaries paid to the Project Employees by GE. The current projected New Occupational Tax Revenues are set forth in Exhibit C, but are only projections and both parties acknowledge and understand these projections will change and will not be the actual New Occupational Tax Revenues.

5.3 Calculation of Increment. The Department of Finance in each year following the Activation Date shall calculate the Increment prior to the Time of Payment pursuant to Section 4.3 of this Amended Agreement. The Increment shall be the sum equal to New Occupational Tax Revenue calculated pursuant to Section 5.2 of this Amended Agreement minus Old Occupational Tax Revenue calculated pursuant to Section 5.1 of this Amended Agreement.

5.4 Calculation of Released Amount. The Department of Finance in each year following the Activation Date prior to the Time of Payment pursuant to Section 4.3 of this Amended Agreement, shall calculate the Released Amount which shall be a sum equal to 80% of the Increment calculated pursuant to Section 5.3 of this Amended Agreement.

Section 6. Pledge of Incremental Revenues Superior to Ordinances and Statutes

As provided in the Act, any pledge of incremental tax revenues by the Authority and/or Louisville in this Amended Agreement shall be superior to any other pledge of revenues for any other purpose and shall, from the Activation Date to the Termination Date, supersede any statute or ordinance regarding the application or use of incremental tax revenues.

Section 7. Default.

7.1 Default by Authority. If the Authority materially breaches or defaults on its obligations under this Amended Agreement or any of the documents incorporated herein or in the reasonable judgment of Louisville there has been a substantial decrease in the Authority's capacity to undertake the obligations required by this Amended Agreement, Louisville may give written notice that remedial action must be taken within thirty (30) calendar days. The Authority shall correct such breach or default within (30) days after the Authority's receipt of such written notice. If the default is not reasonably curable within (30) days, then the Authority may continue to cure the default or breach so long as Louisville is reasonably satisfied that sufficient progress is being made toward a cure. If such corrective action is not taken, Louisville may terminate the Amended Agreement by giving written notice to the Authority at least ten (10) days prior to the effective date of termination.

7.2 Default by Louisville.

If Louisville materially breaches or defaults on its obligations under this Amended Agreement or any of the documents incorporated herein, the Authority may give written notice to Louisville that remedial action must be taken within thirty (30) days after Louisville's receipt of such written notice. However, if the default is not reasonably curable within thirty (30) days, Louisville may continue to cure the default or breach so long as the Authority is satisfied that sufficient progress is being made toward a cure. If such action is not taken, the Authority shall be entitled to any remedy and damages available to it at law or in equity.

7.3 Remedies; Exception.

In the event of any default or termination by either party, the non-defaulting party shall be relieved of any executory obligations hereunder and shall be entitled to any remedy and damages available to it at law or in equity. Provided however, that in the event the Authority, Developer, Louisville or any other entity or body has issued bonds for the benefit of the Project which are secured by a pledge of the Released Amount and/or the Special Fund, Louisville shall not terminate the payment of the Released Amount for the period said bonds remain outstanding and the Authority shall continue to comply with all applicable provisions of this Amended Agreement necessary to make the bond payments with all applicable Released Amounts. Neither

the Authority nor Louisville will terminate or otherwise negatively impact any such pledge, and both parties shall fully cooperate to use the Released Amount to service such bonds.

Section 8. Miscellaneous

8.1 Notices. All notices or other communications hereunder from any party shall be sufficiently given, and shall be deemed given, when delivered or mailed by first class mail or overnight delivery to the other parties at their respective addresses as follows:

If to Louisville:	Louisville/Jefferson County Metro Government c/o Economic Development Department 444 S. 5 th Street, Ste. 600 Louisville, Kentucky 40202 Attn: C. Bruce Traughber
With a copy to:	Jane Driskell, CFO Finance Department 611 W. Jefferson Louisville, Kentucky 40202
If to The Authority:	C. Bruce Traughber, President Metro Development Authority, Inc. 444 So. 5 th Street, Ste. 600 Louisville, Kentucky 40202
With a copy to:	J. David Morris Economic Development Department 444 So. 5 th Street, Ste. 600 Louisville, Kentucky 40202

Section 9. Miscellaneous Provisions.

9.1 Binding Effect. This Amended Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

9.2 Severability. If any clause, provision, or section of this Amended Agreement be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision, or section shall not affect any of the remaining clauses, provisions or sections hereof.

9.3 Governing Law. This Amended Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and enforceable in courts of competent jurisdiction.

9.4 Entire Agreement; Modifications. This Amended Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter of this Amended Agreement. This Amended Agreement shall not be modified, amended, cancelled or terminated except by an agreement in writing signed by the parties hereto.

9.5 Counterparts. This Amended Agreement may be executed in any number of counterparts by some or all of the parties hereto, each of which shall be an original and all of which shall together constitute one and the same instrument.

9.6 Further Assurances. Each of the parties hereto shall use reasonable efforts and cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Amended Agreement. Each party hereto shall from time to time execute and deliver such other agreements, documents or instruments and take such other actions as may be reasonably necessary or desirable to effectuate the terms of this Amended Agreement.

9.7 Mutual Termination. In addition to any other provisions relating to termination of this Amended Agreement contained herein, this Amended Agreement shall terminate upon the written agreement of all the parties hereto, except as otherwise provided in Subsection 7.3 of this Amended Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Amended Agreement to be executed by their officers and officials thereunto duly authorized as of the date first written above.

**LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT**

By: _____
Jerry E. Abramson, Mayor

METRO DEVELOPMENT AUTHORITY, INC.

By: _____

Name: _____

Title: _____

Approved as to Form:

Jefferson County Attorneys Office

EXHIBIT A

Amended Development Plan

[See Next Page]

EXHIBIT B

Development Area

[See Next Page]

EXHIBIT C

Projected New Revenues

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